

Exhibit
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William J. Scola
September 13, 2005

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
CIVIL ACTION NO: 04-10374WGY

NORTH AMERICAN SPECIALTY
INSURANCE COMPANY,
Plaintiff,
vs.
MARY & JOSEPHINE CORP. and
MATTEO RUSSO,
Defendants.

DEPOSITION OF WILLIAM J. SCOLA, a

witness called on behalf of the Defendant, Mary
& Josephine Corp., pursuant to the Federal
Rules of Civil Procedure before Jo Anne M.
Shields, Professional Shorthand Reporter and
Notary Public in and for the Commonwealth of
Massachusetts, at the Law Offices of Joseph G.
Abramovitz, P.C., 858 Washington Street,
Dedham, Massachusetts, on Tuesday, September 13,
2005, commencing at 2:01 p.m.

DUNN & GOUDREAU COURT REPORTING SERVICE, INC.
One State Street
Boston, Massachusetts 02109
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ALSO PRESENT:
Robert McVey

North American Specialty Insurance Company
vs. Mary & Josephine Corp., et al.

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STIPULATIONS

It is stipulated by and between
counsel for the respective parties that the
deposition transcript is to be read and signed
by the deponent under the pains and penalties
of perjury; and that the sealing and filing
thereof are waived; and that all objections,
except as to form, and motions to strike are
reserved to the time of trial.

PROCEEDINGS

WILLIAM J. SCOLA, a witness
called for examination by counsel for the
Defendant, Mary & Josephine Corp., having been
satisfactorily identified by the production of
his driver's license and duly sworn by the
Notary Public, was examined and testified as
follows:

DIRECT EXAMINATION

BY MR. PETTINGELL:
Q. Sir, could you please state your name?
A. William Scola.
Q. And your address?

Q. Was it a form of agency agreement, to your knowledge?

A. I couldn't answer that question.

Q. Okay. I may not have asked you this. What's your position at OMI?

A. Presently?

Q. Yes.

A. President.

Q. Okay. And how about going back to the year 2001?

A. Treasurer.

Q. You were an officer of OMI at that time?

A. Yes.

Q. And you're currently the CEO?

A. Yes.

Q. In that capacity, do you have an understanding of the nature of the agreement that OMI has with Sunderland?

A. I believe I just explained that.

Q. Well, I'm asking if you have an opinion as to whether or not it's an agency agreement --

MR. LANGER: Object to the extent --

Q. -- what your understanding is, sir.

A. I --

MR. LANGER: Object to the extent it seeks a legal conclusion.

A. Yeah. I just don't -- I -- I don't know the legal definition of agency agreement. I really can't answer that question.

Q. Okay. Other than being permitted by Sunderland to approach them with business, does the agreement authorize OMI to do anything else?

A. Not to my knowledge, no.

Q. Okay. Now, throughout the period from 2001 to 2003, policy en- -- policy endorsements were issued to either Policy 1, Policy 2, or Policy 3. You know what I mean when I refer to those policies?

A. I do.

Q. Yes. Does the agreement that OM- -- or OMI has, or had at that time, with Sunderland authorize OMI to issue such endorsements on behalf of Sunderland or its designated

companies?

MR. LANGER: You mean, without any kind of prior authority?

MR. PETTINGELL: My question stands.

Q. Does it authorize them to issue?

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A. May I answer this my own way? It may take a --

Q. Yes.

A. -- a minute. We are authorized to type up endorsements on behalf of Sunderland Marine, and have them approved by Sunderland Marine, and then mail them out from our office, if that answers the question for you.

Q. It does.

A. Okay.

Q. Is OMI also authorized, under the terms of its agreement with Sunderland, to have someone sign the endorsements on behalf of Sunderland as a rep -- as an authorized representative of Sunderland?

A. I believe they are. Yeah.

Q. Okay. OMI wouldn't issue an endorsement, I take it, without first running it by -- running the question of whether an endorsement should issue by Sunderland and getting their approval?

A. Yes.

Q. Yes, that's a correct statement?

A. Yes. We would get their approval prior to sending it out. Yes.

Q. Okay. The ultimate decision on whether or not

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an endorsement should issue lies with Sunderland?

A. Correct.

Q. Okay. Now, who was involved at OMI back during the years 2001 through 1003 with issuing endorsements, the physical --

A. Can --

Q. -- process?

A. The physical --

Q. I understand -- -- process of it? That -- that would be --

certainly, Ms. Houde was involved at that time. Mrs. Lemoges, I believe, was involved at that time. I -- I don't -- memory fails me. I mean, I don't know if anyone else was involved physically with actually typing them up.

Q. Okay. And we have, at least, one example. I think it's the last page of Exhibit 7 is a --

Endorsement No. 3 to Policy No. 3 that was signed by Mr. Ostrow as authorized representative.

A. I believe that's correct.

Q. All right. Did you have -- or did you ever, during that period of time, sign endorsements

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as a -- an authorized representative?

A. I don't believe I did.

Q. Okay. Now, did -- did an endorsement issue every time there was a change in coverage under a policy?

A. That would be the normal and accepted way. Okay. Were there exceptions to the rule?

Q. I really can't think of any.

Q. And what was the purpose of issuing an endorsement, Mr. Scolia?

A. Just to reflect the change in the policy.

Q. Well, why?

A. For any reason. I mean, a variety of reasons. Q. Well, if you could tell us what they are.

A. When -- in this instance, when a client calls and asks to be put on port risk, we would issue the endorsement to reflect that that policy was put on port risk at a certain date.

Q. Well, was one of the reasons to memorialize in writing a change in the contract of insurance between Sunderland and the insured?

A. Yes. That would be a reason.

Q. And was one of the reasons to send it to the client so that the client would have

U. -- we would -- to fully answer the question, that the insured would know that we were aware of what was happening.

Q. Right. Just good business?

A. Yes.

Q. Okay. Now, I wonder if you could tell us what your duties are at OMI as president?

A. I have a feeling that may be beyond the scope of why I'm here today.

Q. Well, maybe. But I've got to know who you are and -- and have some understanding of where you're coming from. Otherwise, your testimony is sort of out there in a -- in a vacuum.

A. Well --

Q. You can be general.

A. Yeah. I mean, I -- I'd have to be general. I mean, I certainly have responsibility for seeing to it that the company is run properly, that we're using proper procedures, that we're doing what our clients wish us to do, that we're doing what the insurance companies wish us to do. And, I guess, as president, the buck stops there.

MR. PETTINGELL: Off the record.
(A brief discussion was held off the record.)

MR. PETTINGELL: Back on the record.

Q. Now, going back to the period of time when Mr. Ostrow was the president --

A. Uh-huh.

Q. -- were your duties different to any degree?

A. To a lesser degree. Obviously, Frank --

Q. Mr. Ostrow took on many of those same responsibilities at that time as president. Could you give us a rundown of your educational history?

A. I have a master's in business, a college degree and a master's degree.

Q. Okay. When did you obtain the master's in business?

A. Oh, a long time ago. 1972.

Q. That's a long time ago.

A. Yeah.

Q. Okay. And could you give us a rundown of your -- your work experience?

A. Work experience prior to the insurance industry, I -- I worked in a bank for

confirmation in writing that the policy change -- the requested policy change had taken place?

A. That would be a reason.

Q. And was one of the reasons because, if there was some mistake made, it would afford the insured with an opportunity to correct the mistake or, at least, raise the fact that, hey, this isn't what I -- what I wanted?

A. That was usually done ahead of the endorsement. We would -- we would send out letters verifying conversations to show what had taken place in that conversation. And, at that point, that gives the client an opportunity then to have done.

Q. And say that is not what I wanted to have done. So is it fair to say that the normal practice of OMI was that, if there was to be a change in coverage under a given policy, there was some sort of writing that went from O -- OMI to the insured, either in the form of a confirmatory letter or in the form of an endorsement?

A. That's the way it should work.

Q. So that the -- the insured would --

A. Be aware.

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approximately five years. I worked in a manufacturing business for approximately five years. And then I got into the insurance business.

Q. When was that?

A. 1985.

Q. And in what capacity did you get into the insurance business?

A. A complete novice.

Q. Well, we all have to start somewhere. But, I mean, who were you working for?

A. I worked with Frank Ostrow --

Q. Was this --

A. -- in -- in a predecessor company to Ocean Marine Insurance Agency.

Q. Okay. And in what capacity were you working with Mr. Ostrow in OMI's predecessor?

A. Principally, learning. I knew nothing about marine insurance at the time.

Q. Okay. And that was beginning in 198 --

A. '85.

Q. '85?

A. Yes.

Q. Okay. And have you continued to work up to the

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present time for OMI or its predecessor company?

A. Yes.

Q. All right. Did you have any formal training in insurance?

A. No.

Q. So it was --

A. Other than a -- a few classroom situations, as Mr. McVey went through, to maintain licensing and things like that. However, those were so minimal in marine insurance as to be worthless towards marine.

Q. Okay. And do you hold any licenses in Rhode Island?

A. Yes.

Q. What licenses?

A. Producer's license.

Q. Is that the --

A. Equivalent to a broker's license.

Q. I -- I'm just curious. Is that the term in Rhode Island?

A. Producer's license. Yes.

Q. Massachusetts, it would be a -- a broker's license?

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Q. Now, the last page of Exhibit 7 has an endorsement, Endorsement No. 3, which covers for port risk only from August 13, 2003 to December 21st, 2003.

A. Yes.

Q. If Endorsement 3 had never been issued and the policy terms and provisions were as set out in Exhibit 7 with the exception of Endorsement 3, would there have been what has been referred to in Mr. McVey's deposition as crew P&I cover available under the policy?

MR. LANGER: Objection to the extent it calls for a legal conclusion.

A. Can you repeat that question again now?

Q. Sure. Exhibit 7 is -- has been testified to, a copy of Policy No. 3 --

A. Uh-huh.

Q. -- and my question is, had Endorsement 3 never been issued -- I understand it did; I'm changing it --

A. Okay.

Q. -- that wasn't part of the policy terms and provisions -- would there have been what has been referred to as crew P&I coverage available

A. I'm not really sure.
Q. Okay.
A. It may be. I -- I -- I am licensed in Massachusetts, but I don't even know the term.
Q. Okay. I don't think it's germane. Well, maybe it is. But . . .
Now, you heard Mr. McVey's testimony concerning the -- his opinion as to the scope of P&I coverage available under a -- a port risk cover?
A. I did.
Q. What is -- what is your understanding, Mr. Scola, of the scope of P&I cover that is available under a port risk policy?
A. Under a -- in my experience, under a normal port risk policy, there is no need for crew coverage. And, hence, there is no crew P&I coverage under a port risk policy under normal situations.
Q. Now, you said "a normal port risk policy." How about a situation where you have a hull and P&I policy in the form of the policy which has been marked as Exhibit 7?
A. Correct. Yeah.

under the policy?

MR. LANGER: The same objection.

A. All right. Let me -- let me answer that question. Had circumstances been totally different --

Q. Yes.

A. -- there were no phone calls made --

Q. Yes.

A. -- there were no endorsement -- there was no endorsement issued, the policy was renewed in August as an operational policy, it would have been an operational policy.

Q. And by "operational policy," you mean a policy that the vessel could have gone out fishing?

A. Could have gone out fishing.

Q. Under that circumstance, under the language as set forth in Exhibit 7, there would have been coverage for the crew?

MR. LANGER: The same objection.

A. Under an operational policy, there would have been coverage for the crew.

Q. Well, if one -- if -- if Exhibit 7 did not have Exhibit -- Endorsement No. 3 --

A. And it was an operational policy.

says. But I asked you something different.

Where in the policy does it say there is no coverage for crew?

A. You mean, where is it written there is no crew -- quote, there is no crew coverage or words to that effect?

Q. Yes.

A. The -- there -- there are no words written to that effect in this policy. There is only this endorsement that reflects it was on port risk.

Q. I see. So you're saying, by virtue -- and we're just restricting ourselves to the policy now -- by virtue of the fact that there's an endorsement that places the vessel on port risk for a period of time, that is where one would look for the conclusion that there is no crew cover?

A. That, and the fact, from what I heard from Mr. McVey's testimony, that the client requested that there be no crew coverage and the boat be put on port risk.

Q. Well, I understand that that's what Mr. McVey says. But I'm asking in terms of the policy itself, the language of the policy that was in

Q. -- would it be regarded as an operational policy by you?

A. Yes.

Q. All right. And Endorsement 3 was issued. And I'm -- I'd like to give you Exhibit 7 --

MR. LANGER: He has it --

A. I have it.

MR. LANGER: -- in front of him.
Q. -- and ask you if you could show me where in the policy language and endorsements it states that there is no coverage for crew?

A. For the time period August 13th, 2003 to December 21st, 2003, the fishing vessel is covered for port risk only, no fishing.

MR. ABRAMOVITZ: Are you looking at --

THE WITNESS: At this endorsement.

MR. ABRAMOVITZ: -- Exhibit No. 7?

THE WITNESS: Yes.

MR. ABRAMOVITZ: Endorsement No. 3 to Exhibit 7?

THE WITNESS: Yes.

MR. ABRAMOVITZ: Okay.

THE WITNESS: Yeah.

Q. I understand that's what Endorsement No. 3

effect at the time of --

A. The -- the only --

Q. -- Mr. Russo's injury.

A. The only reference I can make to no crew coverage is the fact that it's on port risk. I can -- I can make no reference to other facts, such as the boat cannot go offshore. It doesn't say that in this endorsement, but it certainly is implied in this endorsement. It simply says "NO FISHING."

Q. Well, I'm not talking about -- now -- now, that's a navigational warranty, isn't it, what would be referred to as a navigational warranty?

A. It's another warranty, yes, a navigational --

Q. All right.

A. -- warranty. Yeah.

Q. And by navigational warranty and -- you understand that to mean the geographical area that the vessel was permitted to travel in?

A. Yes.

Q. And if one were to go through the various pages of this policy, you would find a navigational warranty limiting the geographical area,

Q. -- and all the other language remained the same -- are you with me?

A. I'm with you.

Q. All right. Now, you have the language that says "This policy is hereby amended from Operational to Port Risk. Adding: American Institute Port Risk Endorsement (01/18/70)," which is Exhibit 5.

A. Uh-huh.

Q. All right. You also have the language that says "Endorsement Section I and II, ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED." Doesn't that mean that the crew warranty would remain unchanged?

MR. LANGER: Objection.

A. Not in my opinion.

Q. And why is that, sir?

A. Because the -- this endorsement puts the vessel on port risk.

Q. And where is the language that says, by virtue of going on port risk, there is no -- I'll use the phrase --

A. I -- I --

Q. -- "P" -- let -- let me finish.

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Q. Well, let's explore that a little bit. You've

been working in the insurance industry as a broker with OMI or a predecessor since 1985?

A. Yes.

Q. And is it fair to say your knowledge and understanding of coverage under marine policies stems from things you've learned over the period of time from 1985 to the present, the last 20 years, I guess?

A. Yes.

Q. All right. Are you suggesting that all vessel owners know as much about insurance, marine insurance, as you do?

MR. LANGER: Objection to the form of the question.

A. That's not at all what I'm suggesting.

Q. All right.

A. Not at all.

Q. So --

A. But -- but, however --

Q. Well --

MR. LANGER: Let him finish -- let him finish his answer. Let him finish the answer.

Q. Not at all what you're suggesting. Is there

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A. I'm sorry. Go ahead.

Q. -- "crew P&I cover"?

A. I don't see language to that effect on here. However, in -- in -- just in common knowledge of the reason for port risk and what people use it for and what know it to be, there is no need for crew coverage on a port risk vessel unless there are unusual circumstances. I go back to that again. That is why the -- it says there's a crew of one covered on here to add that coverage in what otherwise would be considered by the underwriter to be no crew.

Q. Well, you say that's common knowledge in the industry?

A. It is, to me and people I know.

Q. Meaning?

A. I -- I can't speak for everyone in the industry, obviously. But, I -- I mean, when a client calls to put his boat on port risk, he, typically, will take off all the crew to save money because he has no need for crew. He's not doing anything --

Q. I see.

A. -- to that vessel.

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something else you were suggesting?

A. I was suggesting that it's common knowledge that most people would understand how and why to put a vessel on port risk, what the reason for it is, and why they know why they would want to do it.

Q. Isn't one of the reasons that vessel owners put their vessels on port risk because they're not going to be going out fishing?

A. Yes.

Q. Isn't it true, Mr. Scola, that the exposure to someone being hurt on a vessel while out conducting fishing exercises or on an operational vessel is greater than on a vessel tied up to the pier?

A. I would say that the exposure is greater while out fishing. There are more chances of things going wrong. However, you can certainly get hurt, when you're on a vessel doing repairs, very badly.

Q. Isn't one of the reasons that a vessel owner might tie a -- might request a vessel go on port risk because they have repairs that they want to conduct, and they're looking to save

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money because there's a reduced premium because the ex -- the risk is not as great?

A. That may be a reason that a vessel owner would want to go on port risk. That's not, necessarily, a reason why an underwriter would want to place that vessel on --

Q. Okay.

A. -- port risk.

Q. Well, I'm talking about --

A. Oh, I -- I'm telling you what the real world is like though.

Q. Please, I'm speaking about what a vessel owner might want to do. And you understand -- I think you've answered that you understand that that, certainly, is something that vessel owners might want?

A. Yes.

Q. If a vessel owner is working on a vessel tied up at port risk, sometimes, vessel owners have repairmen come aboard: welders, things of that nature.

A. They do.

Q. And, frequently, to save money, vessel owners have the crew come aboard and do repairs

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definitions of port risk that explain as -- as defined by Mr. Scola --

MR. PETTINGELL: Okay.

MR. LANGER: -- in his answers to your questions.

Q. Are you aware of any such documents, sir?

A. I'm not.

Q. Okay.

MR. PETTINGELL: I think, with that, I'm going to pass the witness. I told you we'd be short.

MR. ABRAMOVITZ: Just one moment.

CROSS-EXAMINATION

BY MR. ABRAMOVITZ:

Q. Mr. Scola, I think you testified earlier in the deposition that, once a request for an endorsement or change to the insurance policy came from the -- the insured -- in this case vessel owner -- typically, what would happen, a letter would go out to the insured confirming any communications regarding a proposed change to coverage; is that correct?

A. Yes.

Q. Did one go out in this case to the Mary &

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Josephine Corporation?

A. I believe I saw one to that effect. Yes.

Q. And this would be an endorsement -- now, referring specifically to the policy year August '03 to August '04. Are you saying there was a letter that was -- went from office to the owners of the Mary & Jo -- Mary & Josephine Corporation sometime in that policy period in connection with a requested change?

A. I seem to recall -- and I'm sure -- we probably have one here in the room somewhere -- a letter that was sent by Lynn Houde in October, on the day or the day after she spoke with Matt Russo, regarding placing this vessel on port risk from -- for a couple of different time periods.

But I'm not -- I -- I can't be specific. But I -- I think one went from May to August, and the other went from August forward. But it's -- it's here somewhere, if you want to see it.

Q. Okay. Have you seen anything in any of these letters that indicate to the vessel owner, Mary & Josephine Corporation, that when the vessel

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themselves?

A. They will. Yeah.

Q. I mean, that's not --

A. Not unusual.

Q. -- unheard of?

A. No.

Q. Okay.

MR. PETTINGELL: Just a second, please.

(Brief recess taken.)

BY MR. PETTINGELL:

Q. You're here in response to the notice of deposition duces tecum, and you're being offered as NAS's designate with respect to Paragraph 6. One of the things it asks you to bring with you to the deposition is "Any and all writings of whatever kind or nature that define the term 'port risk coverage' as same as being relied upon by Plaintiff" -- that's NAS -- "in its Complaint." Have you brought any documents with you?

A. I haven't.

MR. PETTINGELL: Mr. Langer, have you got any documents?

MR. LANGER: I'm not aware of any written

41 was put on port risk, there was no crew P&I coverage, any words to that effect in the body of any of these letters?

5 A. No. I don't recall seeing that there -- there
6 was no crew P&I coverage. The only wording I
7 remember is that it was -- it was requested to
8 be put on port risk.

9 Q. Prior to December 3rd, 2003, the date of Matt
10 Russo's accident, had you ever had any
11 conversations with him whatsoever?

12 A. Not that I can recall, no.

13 Q. Prior to December 3rd, 2003, had you ever had
14 any conversations with Sal Russo, Matt's
15 father?

16 A. Not that I can recall.

17 Q. Prior to December 3rd, 2003, had you had any
18 conversations with anybody on behalf of the
19 Mary & Josephine Corporation?

20 A. No, not -- I don't recall speaking with anyone
21 from that corporation.

22 Q. Would it be fair to say that prior to
23 December 3rd, 2003, you had no written
24 communication with anybody on behalf of the
Mary & Josephine Corporation, you, yourself?

43 1 A. We had insurance on another vessel.

2 Q. At any point in time, in connection with
3 conversations with anyone else from the Russo
4 family relative to vessels other than the Mary
5 & Josephine, did you ever communicate to any of
6 these other persons your understanding of what
7 a vessel being on port risk did to the
8 existence of crew P&I coverage?

9 A. If anyone put a vessel on port risk, anyone --
10 either in this family or outside of this
11 family -- and they asked me to put a vessel on
12 port risk, I would have explained the situation
13 to them at the time as to what it was.

14 Q. Were any of the other Russo vessels -- strike
15 that. Were any of the other vessels owned or
16 operated by the Russo family ever put on port
17 risk other than the fishing vessel Mary &
18 Josephine?

19 A. I'm sorry. I don't -- I don't know. Maybe.
20 Maybe not. I just don't know.

21 Q. Do you have any recollection prior to
22 December 3rd, 2003, in connection with any
23 vessel owned or operated by a member of the
24 Russo family, of advising somebody in writing

1 A. Not to my knowledge, Mr. Abramovitz. I mean,
2 it -- it's possible. I don't recall everything
3 that took place. But I don't remember this, if
4 there was anything.

5 Q. Do you remember any exchange of e-mails between
6 you and anybody on behalf of the Mary &
7 Josephine Corporation prior to December 3rd --
8 December -- December 3rd, 2003?

9 A. No. I -- I don't remember communicating with
10 anyone from Mary & Josephine Corporation.

11 Q. Prior to December 3rd, 2003, did you have any
12 communication with anybody from the Russo
13 family concerning vessels other than the
14 fishing vessel Mary & Josephine?

15 A. I believe I -- I had conversations with either
16 Matt's brother or cousin -- I'm not sure who it
17 was -- about a different vessel altogether that
18 wasn't part of that corporation.

19 Q. Okay.

20 A. Yeah.

21 Q. That was owned by somebody in the Russo family?

22 A. Someone else. Yes.

23 Q. Do you remember the essence of any of these
24 conversations?

1 that if the vessel went on port risk, there was
2 no crew P&I coverage?

3 A. I have no recollection of that.

4 Q. Does your office maintain separate files from
5 the -- for the vessels insured by -- through
6 OMI other than the fishing vessel Mary &
7 Josephine?

8 A. I -- I'm not sure I understand the question.
9 But I think I -- I know where you're getting
10 at. We maintain a separate file for each
11 vessel that is insured by us.

12 Q. Have you had occasion prior to today of looking
13 in the other files -- this is for vessels owned
14 or operated by the Russo family other than the
15 Mary & Josephine -- to determine if there's any
16 correspondence in there to anybody from the
17 Mary & Josephine -- anybody from the Russo
18 family, informing them that if a vessel's on
19 port risk coverage, there is no P&I crew
20 coverage?

21 A. I did not have occasion to look.

22 Q. And if either of those vessels -- I'm going to
23 ask you to assume there were two other vessels
24 that were operated by a member of the Russo

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family prior to December 2nd, 2003 -- if those vessels were ever on port risk -- placed on port risk, the documentation in connection with placing the vessel on port risk would be in those respective files?

A. It should be.

Q. Thank you. In connection with the last page of Exhibit 7, the port risk endorsement signed by Mr. Ostrow --

A. Uh-huh. Yes.

Q. -- do you know if, at that time -- this is as of February '04 -- there was anything in writing concerning OMI's arrangement with Sunderland or MAS that granted Mr. Ostrow authority to sign as their authorized representative?

A. I believe your question asks me if there was anything in writing?

Q. Yeah.

A. I don't think so.

Q. Okay. What is your understanding presently as to the relationship between Sunderland and North American Specialties, Sunderland Marine and North American Specialties?

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1 the -- how did you express it -- the
2 opportunity to present business to Sunderland?
3 A. That's right.

4 Q. Okay. When you present business to Sunderland
5 with reference to a vessel operating under
6 Massachusetts, is it your understanding that
7 you're also presenting a business opportunity
8 to North American Specialties?

9 A. I -- I don't know what their arrangement is.

10 Q. When you present a business opportunity to
11 insure a commercial fishing vessel to
12 Sunderland at present, if Sunderland accepts
13 the opportunity, do they always write the risk
14 through North American Specialties?

15 A. Within the state of Massachusetts.

16 Q. And who does Sunderland use through vessels
17 operating out of Rhode Island?

18 A. They -- they use themselves.

19 Q. They have their own company, Sunderland Marine?
20 A. Sunderland Marine.

21 Q. Okay.

22 A. Yes.

23 Q. I don't mean to beat this to death. But I
24 understand from your testimony that you cannot

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1 A. North American Specialty has some type of an
2 arrangement, to -- to my knowledge, within the
3 state of Massachusetts. That's the only state
4 that I know of. There may be others -- because
5 I don't do business all over the United States
6 with Sunderland -- where policies are issued
7 using the name of North American Specialty.

8 To the extent of how that o -- how that
9 operates, I really don't understand it or have
10 any knowledge of -- of the business arrangement
11 or the intricacies or even, actually, why that
12 is. I assume it's for some legal reason that
13 Sunderland does this.

14 Q. Does OMI have a direct relationship with North
15 American Specialties?

16 A. We do have to communicate with North American
17 Specialties as far as having things approved,
18 certain things that they need to see ahead of
19 time. I believe they get copied on things that
20 we send Sunderland.

21 Q. And I think you said very early in your
22 testimony today that the arrangement that OMI
23 has is -- pursuant to this written arrangement
24 with Sunderland is, you have the right or

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1 refer to any written materials from any source
2 that supports your understanding that when a
3 vessel is placed on port risk, there is no crew
4 P&I coverage. Correct?

5 A. You know, I probably didn't exhaust every
6 avenue to see -- to -- to read everything
7 that's out there on that. Nothing comes to
8 mind in writing. As I said in my testimony,
9 it's, pretty much, common knowledge that a --
10 an underwriter who accepts port risk just
11 naturally knows that he's not accepting crew
12 coverage with that.

13 Q. Common knowledge among whom?

14 A. Common knowledge among underwriters, common
15 knowledge among claim people, common knowledge
16 among agents and brokers, common knowledge
17 among fishermen who own vessels who place them
18 on port risk.

19 Q. But you, yourself, prior to December 2nd or
20 December 3rd, 19 -- strike that. You
21 yourself, prior to December 3rd, 2003, have no
22 personal knowledge of what Matt Russo
23 understood the insurance situation would be as
24 of that date, do you, sir? You never spoke to

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Q. I never spoke with him. So I guess I don't have knowledge. But I -- certainly, be -- in preparation for this, I looked through the file to see what his -- as a client, you know, what he did with his account. And it was on-and-off port risk without crew many occasions and -- and on with -- with one crew on another occasion. So I assume that someone with that much experience knows what's going on. I could be wrong, but I just have to assume that.

Q. Is it fair to say that, prior to the port risk endorsement of February 16th, 2004 to Exhibit No. 7, the policy at issue in this case --

A. I'm with you. Yeah.

Q. -- there was no written endorsement in the file as of December 3rd, 2003?

A. There was no written endorsement with respect to port risk --

Q. Yes.

A. -- for that policy -- Policy Year 3.

Q. Yes.

A. That's correct.

Q. Okay. So let me just make sure this -- we got

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1 No. 8.)
2 (Letter to Matt Russo from Lynanne Houde
3 dated 12/18/02 marked as Scola Exhibit
4 No. 9.)
5 Q. Mr. Scola, with reference to Exhibit No. 8,
6 which is Ms. Houde's letter of October 3rd,
7 2003, is that the letter that you referred
8 to --
9 A. Yes.
10 Q. Let me get it out, please.
11 A. Oh, I'm sorry.
12 Q. Is that the letter that you were making
13 reference to when you indicated that you
14 believe you saw, in the file, a letter going to
15 Mr. Russo confirming his request that the
16 policy -- that the vessel be placed back on
17 port risk coverage and the policy amended?
18 A. Yes.
19 Q. Okay. And then, I understand from Mr. Langer's
20 testimony that, sometime after December 2 --
21 or as Mr. Langer's off-the-record statement
22 that, sometime after December 12th, 2003, the
23 date the vessel -- the vessel again became
24 operational was handwritten in on Exhibit

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1 this clear on the record.
2 A. Yeah.
3 Q. You agree with me, do you not, sir, that prior
4 to Matt Russo's accident December 3rd, 2003,
5 there was no written endorsement put -- placing
6 this vessel on port risk that was part and
7 parcel to the insurance policy at issue in this
8 case? Do you agree with that, sir?
9 A. I agree. And I -- I also extend that there was
10 a letter that was sent to him, showing that he
11 asked to have it placed on port risk.
12 Q. There was --
13 A. And that is --
14 Q. -- a letter that --
15 A. That was in the file.
16 Q. -- that went out from Ms. Houde?
17 A. That's correct.
18 Q. Well, we'll chat with her about that.
19 MR. PETTINGELL: Well, off the record for a
20 second.
21 (A brief discussion was held off the
22 record.)
23 (Letter to Matt Russo from Lynanne Houde
24 dated 10/3/03 marked as Scola Exhibit

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1 No. 8, 12/21/03?
2 A. Yes. It must have been handwritten in 12/21 or
3 after.
4 MR. ABRONOVITZ: Okay. Thank you. That's
5 all I have.
6 REDIRECT EXAMINATION
7 BY MR. PETTINGELL:
8 Q. Just a few more, Mr. Scola.
9 MR. PETTINGELL: Oh, I'm sorry, Len, unless
10 you want to go first, whatever your pleasure
11 is.
12 MR. LANGER: I have -- I have no questions.
13 I'm beginning to feel a little like a ping-pong
14 ball between the -- the two defendants. But
15 I'll reserve my comments until --
16 MR. PETTINGELL: Okay. Well, it might make
17 sense to go at the end, if you wish.
18 Q. But, anyway, coming back to Exhibit 9 -- I'm
19 sorry -- Exhibit 8 --
20 MR. PETTINGELL: Oh. Something's wrong
21 here. Oh, I see what I did.
22 Q. -- this is the only writing that you are aware
23 of running from OH1 to Mary & Josephine Corp.
24 that references, I guess, by extension, that

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here's no crew warranty because it says the vessel's going on port risk?
That, and another letter that went out after that as a reminder that was --
Q. All right.
A. -- the same letter again. Yeah.
Q. Okay. And other than the fact that it states that the vessel's on port risk, it, certainly, doesn't contain any language, express language, saying, and there's no crew P&I coverage?
MR. LANGER: Objection. The document speaks for itself.
A. It doesn't say that -- the words you used.
Q. And you're unaware of any writing to Mary & Josephine Corp. that does state in clear and concise language that, during the period the vessel is on port risk, there will be no crew P&I coverage?
A. I'm unaware of anything in writing. Correct.
Q. All right. And I think you said it's your understanding that that's common knowledge?
A. I did say that.
Q. But you'll also agree you have no knowledge of what Mr. Russo's understanding of insurance is?

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A. I don't believe that's what I said.
Q. Well, I'm asking you.
A. We --
Q. Do you, sir, know what Mr. Russo's knowledge of the coverage available under port risk insurance policies was at the time that Exhibit 8 was sent out?
A. I never spoke with him about it. So I really shouldn't say anything. I'm only reflecting upon what I see he has done with his insurance coverage by going on port risk without crew, with crew over quite a few -- probably more than any client I know in that short a period of time.
Q. Mr. Russo would tie his boat up and reduce the size of the crew on the --
A. Eliminate the crew.
Q. -- on the vessel during --
A. Eliminate the crew.
Q. -- the period -- we have to talk one at a time.
A. I'm sorry.
Q. -- would reduce the size of the crew during the period that the vessel was tied up?
A. Yes.

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Q. And it's your recollection that, at times, he reduced it to zero?
A. Yes.
Q. Do you know what policy year he did that in, sir, reduced it to zero?
A. I -- I cannot remember. I mean, I could look it up with some research. I could tell you.
Q. Are you certain that he ever re -- that -- that he reduced it to zero for any of the policies?
A. To answer accurately, he was given port risk credits with zero crew coverage at times and, at other times, with crew coverage.
Q. Other times, he reduced it to less than full crew coverage?
A. I don't know if he did, or it was suggested by Mr. McVey. I'm not sure how that worked.
Q. Well, ultimately, the scope of the coverage that Mr. Russo or Mary & Josephine Corporation was requesting was for them to decide, wasn't it?
MR. LANGER: Can you repeat that question?
THE WITNESS: Could you read that one to me again?

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Q. Ultimately --
A. Yeah.
Q. -- the scope of coverage that Mary and Josephine Corporation was requesting was for them to decide, wasn't it?
A. Was for Mary & Josephine to decide.
Q. Yes.
A. It was their decision.
Q. Right.
A. Yes.
Q. The fact that somebody suggested that you might want to keep one man on didn't mean they had to follow that advice?
A. They did not.
Q. Okay. And other than the fact that Mary & Josephine Corporation appeared to have a habit of putting their vessel on port risk and making changes in the size of the crew, you don't have any knowledge of what Mr. Russo's awareness of the scope of coverage available under port risk was, do you?
A. You know, I -- I don't know how you can say that af -- after seeing what was done with his policy by him.